

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Portland Division

THE LEARNING INTERNET, an Oregon  
corporation,

CV 07-227-AC

Plaintiff and  
Counterclaim-Defendant,

ORDER

v.

LEARN.COM, INC., a Delaware  
corporation,

Defendant and  
Counterclaim-Plaintiff.

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MARSH, Judge:

On November 25, 2009, Magistrate Judge Acosta issued a Findings and Recommendation (doc. 127) in which he made rulings on multiple motions and cross-motions for partial summary judgment pertaining to the parties' claims and counterclaims for fraud and/or trademark infringement.

Defendant Learning.Com, Inc. (LCI) has filed timely objections (doc. 130) to all but one of the magistrate judge's findings, legal conclusions, and ultimate recommendations.

When any party objects to any portion of the magistrate judge's Findings and Recommendation on a dispositive motion, the district court must make a de novo determination of that portion of the magistrate judge's report. 28 U.S.C. § 636(b)(1). The district court may accept, reject, or modify the recommended disposition, receive further evidence, or return the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b). United States v. Bernhardt, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988). As to any portion of the F&R to which no objection is made, the

district court must review de novo only the legal principles applied by the magistrate judge. Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9<sup>th</sup> Cir. 1983).

Magistrate Judge Acosta thoroughly and painstakingly addressed all of the issues raised in the pending motions. After de novo review, I concur in each of his Findings and Recommendations as to which Defendant LCI has filed timely objections. I also find he applied the correct legal principles as to the only Finding and Recommendation to which LCI filed no objection.

Accordingly, the court **adopts** Magistrate Judge Acosta's Findings and Recommendation and orders as follows:

1. Plaintiff The Learning Internet's (TLI) Motion for Partial Summary Judgment (doc. 66) is **granted** as to LCI's Fifth Counterclaim, which alleges TLI engaged in fraud before the United States Patent and Trademark office (PTO) as to its application to register service mark 78/767,099, and **denied** as to Count 1 of TLI's Second Claim for Relief, in which TLI seeks cancellation of certain of LCI's registered trademarks based on LCI's alleged fraud before the PTO in applying for those trademarks;

2. TLI's Motion for Partial Summary Judgment (doc. 77) is **granted** as to Count 1 of TLI's First Claim for Relief, in which TLI seeks a Declaratory Judgment of No Trademark

Infringement, and also **granted** against LCI's First Counterclaim for Federal Trademark Infringement, Second Counterclaim for State and Common Law Trademark Infringement, Third Counterclaim for Unfair Competition, Fourth Counterclaim for Unlawful Business and Trade Practices, and Sixth Counterclaim, in which LCI seeks an award of reasonable attorneys fees;

3. LCI's Motion for Partial Summary Judgment (doc. 74) that LCI's trademarks are not merely descriptive is **denied**; and

4. TLI's Cross-Motion for Partial Summary Judgment (doc. 100) that LCI's trademarks are descriptive is **denied**.

IT IS SO ORDERED.

DATED this 17 day of March, 2010.

/s/ Malcolm F. Marsh  
MALCOLM F. MARSH  
United States District Judge